

105 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Central Vermont Public Service
Corporation

Docket No. ER98-1440-000

Docket No. ER03-1110-000
(not consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued October 2, 2003)

1. On July 22, 2003, a settlement agreement was filed on behalf of Central Vermont Public Service Corporation (Central Vermont) among the New Hampshire Office of the Consumer Advocate, the City of Claremont, New Hampshire, the Governor's Office of Energy and Community Services, New Hampshire Legal Assistance, Central Vermont, Connecticut Valley Electric Company, Inc. (Connecticut Valley), Public Service Company of New Hampshire (PSNH) and Staff of the New Hampshire Public Utility Commission (NHPUC) (settlement). The settlement is intended to resolve all stranded cost issues in the referenced proceedings. Also on July 22, 2003, in Docket No. ER03-1110-000, Central Vermont filed a notice of termination applicable to Central Vermont's Rate Schedule FERC No. 135.

2. Initial comments were due to be filed with the Commission by parties on August 11, 2003, and answering comments were due to be filed on August 21, 2003. Comments applicable to the notice of contract termination were due to be filed on August 12, 2003. No comments were filed.

3. The subject settlement is in the public interest and is hereby approved. Termination of Central Vermont's Rate Schedule FERC No. 135 is hereby approved, to become effective upon Connecticut Valley closing the facilities sales transaction with PSNH. Central Vermont is hereby directed, within fifteen days after the sales transaction is completed, to inform the Commission of the date upon which the sales transaction is consummated.

4. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

5. This order terminates Docket No. ER98-1440-000. A new subdocket will be assigned in Docket No. ER03-1110-000 upon receipt of the above required compliance filing.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

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Docket Nos. ER98-1440-000
ER03-1110-000

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Nora Mead BROWNELL, Commissioner *dissenting in part*:

1. I have previously stated my belief that the Commission should hold itself to a high standard when it seeks to revise agreements that it has either exempted from prior review¹ or reviewed and accepted.² Specifically, I have argued that in the absence of explicit language in such agreements indicating that the parties intended to allow subsequent changes under the just and reasonable standard, the higher Mobile-Sierra public interest standard should apply. During my tenure on this Commission, I have become even more convinced of the wisdom of this position. Therefore, I can no longer support making our acceptance of settlement agreements subject to a Commission reservation of authority to make future revisions under the just and reasonable standard, unless, of course, the agreement itself includes language requesting such a reservation.

2. Under Supreme Court precedent, the Commission always retains its authority to modify a contract it has previously accepted, if the contract later comes into conflict with the public interest. I believe that this precedent provides the contract certainty needed to ensure investment while simultaneously protecting the public from unintended consequences when the circumstances surrounding private contracts have changed. If the Commission has objections to a settlement, we should articulate them when we first review it, instead of approving the settlement with the cloud of uncertainty that we might

¹ See, e.g., *Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C.*, 103 FERC ¶ 61,353 (2003); *Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities*, 67 Fed. Reg. 51,516 (Aug. 8, 2002), FERC Stats. & Regs. ¶ 32,562 at 34,275 (2002).

² *Westar Generating, Inc.*, 100 FERC ¶61,255 (2002).

make subsequent changes under a lower-than-public-interest standard after market participants have come to rely on it.

3. Therefore, I would have accepted this agreement without reserving the option of revisiting it under a just and reasonable standard.

Nora Mead Brownell